

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Request for Clarification of Clerical)	
Changes To 47 C.F.R. § 54.307 and for)	
Direction to USAC)	

**COMMENTS OF THE
NEBRASKA RURAL INDEPENDENT COMPANIES**

Introduction

The Nebraska Rural Independent Companies (the “Nebraska Companies”),¹ hereby submit comments in the above-captioned proceeding pursuant to the Public Notice.² These comments address the request filed by General Communication, Inc. (“GCI”) seeking to change 47 C.F.R. § 54.307 and seeking an order directing Universal Service Administrative Company (“USAC”) to withdraw its guidance concerning Section 54.307. GCI states that USAC is without authority to issue certain guidance concerning universal service fund (“USF”) support to competitive eligible telecommunication carriers (“CETCs”), that such guidance was legally erroneous, and that the Federal

¹ The Nebraska Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, The Wireline Competition Bureau Seeks Comment on Request for Clarification of Clerical Changes to 47 C.F.R. § 54.307 and for Direction to USAC, DA 05-2184 (rel. July 27, 2005).

Communications Commission (“Commission”) should correct clerical changes made to 47 C.F.R. § 54.307.³

GCI’s request is without merit and should be denied. Specifically, it would be improper to rewrite 47 C.F.R. § 54.307(a)(3) as requested by GCI. Additionally, this rewrite could have the consequence of reducing USF support to incumbent local exchange carriers (“ILECs”) that do not lose customers to CETCs. This consequence could occur if the rule is rewritten as requested by GCI, because the Commission has not defined “new” and “captured” customers. In the interest of competitive neutrality, the Commission clearly should not reduce support to ILECs in the event that ILECs continue to serve a customer.

The Commission Should Reject GCI’s Request to Rewrite 47 C.F.R. Section 54.307(a)(3) or to Rescind the June 22, 2004, Federal Register Notice.

GCI’s request to rewrite Section 54.307(a)(3) should be rejected. GCI argues that a sentence contained in the rules before the release of the *Ninth Report and Order*⁴ stating that “[t]he amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier,” (“*Former 54.307(d) Sentence*”) which refers to an instance in which a CETC provides the supported services using neither unbundled network elements nor wholesale service, was “inadvertently dropped.”⁵ GCI suggests that this sentence should be reinserted as the last sentence of Section

³ Ibid.

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (“*Ninth Report and Order*”).

⁵ See Letter to Thomas Navin, FCC, from John Nakahata, Counsel for GCI, *Request for Clarification of Clerical Changes and for Direction to USAC*, CC Docket No. 96-45, filed June 29, 2005, at p. 5.

54.307(a)(3).⁶ However, this suggestion is not consistent with the *Ninth Report and Order*.

The Commission's act of publishing a correcting amendment to Section 54.307 on June 22, 2004, indicates that the elimination of the *Former 54.307(d) Sentence* in the *Ninth Report and Order* was a purposeful action by the Commission.

A review of subpart 3 and 4 of Section 54.307, before the June 22, 2004, correction, reveals that the regulation was confusing. Those subparts provided as follows:

(3) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to Sec. 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support that the incumbent LEC would have received for that customer. (emphasis added)

(4) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to Sec. 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support previously provided to the incumbent local exchange carrier for that customer. The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier. (emphasis added)

It is clear that these subparts were both included due to a clerical error. For example, approximately the first forty words from both subparts are identical. This duplication was caused by an error that was corrected by the Commission in June 2004. It would clearly be erroneous to now rewrite Section 54.307(a)(3) and attach a single sentence from a deleted subpart of Section 54.307(a)(4) to subpart 54.307(a)(3).

⁶ Ibid.

The Commission has recognized the error and issued a correction in the *June 22, 2004, Federal Register Notice*⁷ so that the rules are precisely as presented in the *Ninth Report and Order*. The regulation now clearly reflects the decision in the *Ninth Report and Order*.

The Commission Would Need to Develop Definitions and Administrative Procedures in Order to Administer the Rule Rewrite Requested by GCI.

The Nebraska Companies believe that if the Commission were to grant the request of GCI to either rewrite Section 54.307(a)(3) or to rescind the *June 22, 2004 Federal Register Notice*, it would be necessary for the Commission to develop definitions for terms contained within Section 54.307 and to develop administrative procedures in order to properly administer the rules. For example, the terms “new” and “captured” contained in Section 54.307(a) are not defined with respect to subscriber lines. These definitions would be necessary for the proper implementation of the rewritten rule. Also, USAC would need procedures in order to track “new” and “captured” subscriber lines for CETCs.

The Commission received a petition for expedited rulemaking from the National Telecommunications Cooperative Association in 2002 requesting that the Commission define the terms “new” and “captured” subscriber lines for purposes of receiving universal service support pursuant to 47 C.F.R. § 54.307.⁸ The Commission requested

⁷ See 69 FR 34601-602 (“*June 22, 2004 Federal Register Notice*”).

⁸ See *Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307 et seq.*, RM No. 10522, National Telecommunications Cooperative Association Petition for Expedited Rulemaking (filed July 26, 2002).

comment on that petition,⁹ but has not ruled on the petition. The Commission does not have a working definition of “new” and “captured” subscriber lines that could be used to enforce the provisions of a rewritten Section 54.307. Given the fact that the comments received on this issue are about three years old, the Nebraska Companies believe that it would be appropriate to refresh the record with additional comments before the Commission were to rule on this issue or rewrite Section 54.307(a)(3).

In addition to developing definitions for “new” and “captured” subscriber lines, USAC would need to develop procedures to track such lines for CETCs. The Nebraska Companies believe that procedures developed for such tracking could be administratively burdensome. While the definition of a “captured” subscriber line has not been developed, the information needed to determine whether a subscriber line has been “captured” may be similar to the information needed to implement a “primary line” support mechanism. In its Notice of Proposed Rulemaking (“NPRM”) on the Federal-State Joint Board’s *Recommended Decision* concerning the process for designation of ETCs and the Commission’s rules regarding high-cost universal service support, the Commission specifically requested comments from USAC on the administration of a “primary line” approach to limit the scope of universal service support.¹⁰ In responding to the Commission’s request, USAC indicated that it would be critical to clearly define who constitutes the “consumer” to enable effective administration of the “primary line”

⁹ See *Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307 et seq.*, RM No. 10522, Order, DA 02-2214 (rel. Sept. 9, 2002).

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004) at para. 3.

universal service support mechanism.¹¹ USAC noted that information such as name, address, and possibly some other unique identifier would be necessary to administer a “primary line” support mechanism.¹² This would require USAC to collect substantially more data than it collects today.¹³ USAC also indicated that the data it collected to administer the “primary line” support mechanism would need to be updated periodically.¹⁴

In summary, the request of GCI should be denied because (1) the tracking of subscriptions by customer in order to identify “new” and “captured” subscriber lines would require the collection of much more information, and therefore would result in a greater administrative burden and (2) the definitions of “captured” and “new” would be necessary to properly implement GCI’s rewritten regulation.

Conclusion

The Nebraska Companies urge the Commission to deny GCI’s request. The Commission has appropriately issued a correcting amendment to Section 54.307 so that the rule is precisely as presented in the *Ninth Report and Order*. This correction confirms that the rules for Section 54.307 contained in the *Ninth Report and Order* were correct and fulfilled the intent of the order. Furthermore, GCI’s request should not be granted because proper definitions and procedures do not exist to support the implementation of the rewritten regulation.

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Universal Service Administrative Company (filed Aug. 6, 2004) at p. 6.

¹² Id. at p. 7.

¹³ Id. at p. 8.

¹⁴ Id. at p. 10.

Dated: August 17, 2005.

Respectfully submitted,

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Hershey Cooperative Telephone Company, Inc.,
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